

POLISH LAW REGULATIONS FOR FOOD SAFETY

Anna BAZAN-BULANDA*University of Technology, Częstochowa, Poland**E-mail: annabazan@wp.pl*

Summary: The aim of the article is to analyze the Polish and EU regulations on food safety. Food is essential to life of every human, so it is important to its safety. Consumers bear all risks associated with the consumption of the food, that is why regulations are necessary to ensure protection from the consumption of harmful substances. These regulations shall apply to both methods of food production and the placing on the market. The basic legal act regulating this issue is the Act of 25th August 2006 concerns food safety and nutrition, which is the frame work which regulates in a comprehensive manner the conditions necessary to ensure food safety “from farm to a table”. Poland, like all European Union countries, forming the so-called rules apply “Hygiene package” comprising four regulations laying down rules for the hygiene of foodstuffs and the rules of conduct food sector regulatory authorities. Consumer safety not only provide relevant legislation. It is essential to the proper application of the rules.

Keywords: food, security, law regulations.

1. Introduction

The aim of the paper is the analysis of the Polish and EU legal regulations concerning food safety. Food is essential for life of every human being, therefore, its safety is so important. Consumers take the whole risk associated with the consumption of food; therefore, legal regulations providing their safety against the intake of harmful substances are necessary. These regulations must refer to both the ways of manufacturing foodstuffs and introducing them onto the market. However, discussing all these regulations in the paper is not possible. There will be presented the regulations concerning the basic terminology of food law: the concept of food, foodstuff, food supplements. Poland, like all the Member States of the European Union, is obliged to observe the EU legal regulations. The first legal act of the EU food law is the Regulation (EC) No 178/2002 of the European Parliament and the Council of 28 January 2002 laying down the general principles and requirements of food law, appointing the European Food Safety Authority, and laying down the procedures concerning food safety (Dz. Urz. UE L 31 z 1.02.2002) (hereinafter referred to as the General Food Law - GFL). It specifies, in Article 3, section 1, the food law of the European Union; “food law” amounts to statutory, executive and administrative provisions regulating food in general, and their safety in particular, both at the level of the Community and at the national level; this definition includes all the stages of production, processing and distribution of food and feed manufactured for farm animals or used to feed farm animals”. “The stages of production, processing and distribution” amount to every stage from the production of basic food, through its storage, shipment, sale or supply to consumers, and also carriage, production, manufacturing, storage, shipment, sale and supply of feed. As it results from the preamble to the Regulation, free movement of food and feed in the European Union is possible only when the requirements for food and feed safety within the Member States do not significantly differ from each other. Poland, like all the Member States, is obliged to observe the provisions creating, so called, Hygiene Package, including four regulations laying down the principles of

hygiene of foodstuffs and the rules of conduct of the authorities supervising the food sector. These are:

- Regulation (EC) No 852/2004 of the European Parliament and the Council of 29 April 2004 on the hygiene of foodstuffs,
- Regulation (EC) No 853/2004 of the European Parliament and the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules,
- Regulation (EC) No 854/2004 of the European Parliament and the Council of 29 April 2004 laying down specific hygiene rules for the hygiene of foodstuffs,
- Regulation (EC) No 853/2004 of the European Parliament and the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption.

The basic Polish legal act regulating this issue is the framework Act of 25 August 2006 on food and nutrition safety (hereinafter referred to as AFN), which comprehensively regulates the conditions necessary to ensure food safety “from farm to table”. Section 1 of the Art.1 indicates that the law regulates the requirements and procedures necessary to provide food safety in accordance with the regulations of the European Union and, in section 2, it indicates the EU regulations.

Both GFL and AFN are not applicable to primary production for private domestic use or to the domestic preparation, handling or storage of food for private domestic consumption (Art.1 section 3 of GFL, as well as Art. 2 section 2 of AFN). The Polish law also excludes the application of its provisions to the people individually collecting mushrooms growing in natural conditions (Art. 2 section 2 of GFL).

2. The concept of food

Food is defined differently. Colloquially, the concept of food is understood as food products, food and nourishment. (Polański ed., 2012). “Food can be assigned many functions. The basic one is physiological function, conditioning the existence of a human being and their biological development but satisfying hunger and the pleasure of eating is not less important.” (Czechowski ed., 2011, p.460) It is the basic concept for food law. AFN, in Art.3 section 1, indicates that food (foodstuff) is any substance or product within the meaning of Art. 2 of GFL. Polish provisions refer straight to the EU Resolution, according to which food (foodstuff) “means any substances or products, whether processed, partially processed or unprocessed, intended for human consumption or, whose human consumption may be expected”. On the other hand, foodstuff is: soft drinks, chewing gum and any substances, including water, intentionally added to food during its manufacture, preparation or processing. This definition includes water according to the standards specified in accordance with Art. 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.

Water, in accordance with EU regulations, should be considered as food from the moment of the water outlet from the source, e.g. water intake facilities, cisterns or from the moment of placing water in bottles or containers. Therefore, water is considered as foodstuff from the moment it can be consumed by the man.

The concept of foodstuff does not include:

- a) „feed;
- b) live animals unless they are to be marketed for human consumption;
- c) plants prior to harvesting;
- d) medicinal products within the meaning of Council Directives 65/65/EEC (1) and 92/73/EEC (2);

- e) cosmetics within the meaning of Council Directive 76/768/EEC (3);
- f) tobacco and tobacco products within the meaning of Council Directive 89/622/EEC (4);
- g) narcotic or psychotropic substances within the meaning of The Only Convention on Narcotic Drugs of 1961 and The Convention on Psychotropic Substances of 1971;
- h) residues and contaminants” (Art. 2 GFL)

The definition of food in the EU law is modeled on Codex Alimentarius. “For the purposes of the Codex Alimentarius, food means any substance, whether processed, semi-processed or raw, which is intended for human consumption, including drink, chewing gum and any substance which has been used in the manufacture, preparation or processing of “food” but does not include cosmetics or tobacco or substance used only as drugs” (Code of Ethics for International Trade in Food, CAC/RCP 20-1979 (Rev.1-1985) and includes definitions of food in the legislation of the Member States. In the British law, according to Food Safety Act of 1990:

(1) In this Act „food” includes:

- (a) drink;
- (b) articles and substances of no nutritional value which are used for human consumption;
- (c) chewing gum and other products of a like nature and use; and
- (d) articles and substances used as ingredients in the preparation of food or anything falling within this subsection.

(2) In this Act “food” does not include:

- (a) live animals or birds, or live fish which are not used for human consumption while they are alive;
- (b) fodder or feeding stuffs for animals, birds or fish;
- (c) controlled drugs within the meaning of the Misuse of Drugs Act 1971; or
- (d) subject to such exceptions as may be specified in an order made by the Secretary of State - (and) medicinal products within the meaning of the Medicines Act 1968 in respect of which product licenses within the meaning of the Act are for the time being in force; or other articles or substances in respect of which such licenses are for the time being in force in pursuance of orders under section 104 or 105 of the Act (the application of Act to other articles and substances).”(Szymecka-Wesołowska, 2013 p.54.)

As it results from the definition of GFL, a potential possibility of consumption of the product by humans is enough to qualify it as foodstuff and include in the food law regulations. In cases where the specific substance may be used for both human consumption and other industrial purposes, it must meet the conditions required for foodstuffs until proven that is not suitable for human consumption.

3. Food supplement

There are also food supplements available on the market. They are not food but they are consumed by people. Therefore, the EU and Polish law include their definition. Food supplement is foodstuff being the supplement of a regular diet. A regular diet is a balanced and varied diet. “An adequate and varied diet could, under normal circumstances, provide all nutrients necessary for proper development and maintenance of healthy lifestyle in quantities meeting the standards established and recommended by generally accepted scientific data” (item 3 of the preamble of the Directive 2002/46/EC). Food supplement, in accordance with the Polish and EU provisions, is intended only to complement a regular diet.

In accordance with Art. 3 section 3 item 39 of GFL, food supplement is foodstuff which is: the supplement of a regular diet; concentrated source of vitamins, minerals or other substances, single or complex, indicating nourishing or another physiological effect; placed on the market in the form that allows dosage, in the form of: capsules, tablets, pills and other similar forms, sachets of powder, ampoules of liquid, drop dispensing bottles and other similar forms of liquids or powders intended to be consumed in small, measured amounts of units. Lack of fulfillment of any of the above criteria brings about that the substance cannot be considered as food supplement. The supplement may not have the properties of a medicinal product within the meaning of pharmaceutical legislation. In accordance with Art. 2 item 32 of pharmaceutical legislation, a medicinal product is “any substance or combination of substances presented as having properties for preventing or treating disease in human beings or animals or administered with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans by exerting pharmacological, immunological or metabolic action”. On the other hand, Art. 1 item 2 of the Directive 2001/83/EC indicates that a medicinal product is: a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings; or b) any substance or combination of substance which may be used in or administered to human beings with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.”

The provisions settle how to classify the supplement which, at the same time, fulfills the criteria of a medicinal product. In such a case, it is referred to as a medicinal product.

4. Conclusions

Consumer safety is provided not only by appropriate legal regulations. The provisions of both the EU and Polish law concerning food safety are rather extensive. They, among others, regulate the issues of food labeling, authorized food additives used in its production, the food coming from genetically modified products or organic food. It is necessary to apply these provisions correctly to make them fulfill their role and secure consumers against the consumption of food posing a threat to human life and health. First of all, it should be established if, in the specific case, we deal with foodstuff or food supplement. Therefore, in the paper, there are presented only the definitions without the knowledge of which one cannot discuss the application of the rules of food law. The other issues ought to be the subject of further considerations.

References

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